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IN THE

Supreme Court of the United States

October Term, 1970
No. 1392

THE LOS ANGELES POLICE DEPARTMENT, *et al.*,
Petitioners,

vs.

ROYGENE ROBINSON, *et al.*

On Petition For Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

MEMORANDUM OF RESPONDENTS, IN OPPOSITION.

A. L. WIRIN,
FRED OKRAND,
LAURENCE R. SPERBER,
257 South Spring Street,
Los Angeles, Calif. 90012,
(213) 624-9708,

TERRY J. HATTER, JR.,
PAUL L. MCKASKLE,
GARY BELLOW,
STANLEY W. LEVY,
MICHAEL HENRY SHAPIRO,
DAVID A. BINDER,
GEORGE WM. PILLING,
c/o Western Center on Law and Poverty,
1709 W. 8th Street,
Suite 320,
Los Angeles, Calif. 90017,
(213) 483-1491,
Attorneys for Respondents.

Parker & Son, Inc., Law Printers, Los Angeles. Phone 724-6525

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MEMORANDUM OF RESPONDENTS, IN OPPOSITION.

The Members of the Board of Police Commissioners of the City of Los Angeles Are Proper Party Defendants.[1]

[1]Nowhere in the Petition for Writ of Certiorari is the "Petitioner" (p. 1) nor the "petitioners" (p. 6) named or identified. It is true that the Amended Complaint included as party defendants both the Board of Police Commissioners and its members.

The District Court Dismissed as to both; the Court of Appeals (Petition, Appendix A, p. 2) reversed only as to the members of the Commission, the plaintiffs below seek no review in this Court; hence, the only proper petitioners are the members of the Commission.

(Also named in the complaint are the City Council and its members. The Court of Appeals upheld the order of the District Court dismissing the cause as to them; and that matter is no longer in the case.)

1. The head of the Police Department of the City of Los Angeles is not the Chief of Police,[2] but the Board of Police Commissioners.

The Los Angeles City Charter so provides. The applicable sections of the City Charter are set forth in Appendix "A" hereto.

The Board of Police Commissioners has so construed the Charter, and its authority. See Appendix "B" hereto.

2. It would be improvident for the case against the Los Angeles Police Department presently pending in the District Court to be prepared for trial, and go to trial,[3] without the head of the Police Department, the members of the Board, remaining party defendants.

Without them in the case— and hence subject to the order of the District Court—they could direct the Chief of Police to vacate any order he made pursuant to decree of the District Court; and they would remain free otherwise to frustrate the orders of the District Court upon the Police Department, all of whose officers are subject to the control of the Police Commission.

3. On the other hand, no great "hardship" will befall the members of the Board if they remain parties defendant.

All costs of their defense will be met by the City of Los Angeles; and they are, and will continue to

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[2]As to the Chief of Police, and the Los Angeles Police Department, named as defendants, the District Court denied motions to dismiss; and the case in the District Court is proceeding against them.

[3]It is anticipated that the trial may be a long one.

be represented by the City Attorney of the City of Los Angeles, who appears for them in this Court, and who is presently representing all the other defendants in the case pending, and awaiting trial, in the District Court. This, of course, is at the expense of the City of Los Angeles.

4. There was no need for the District Court nor for the Court of Appeals, as there presently is no need for this Court, to determine now, *before* trial of the cause, the kind of relief the District Court may grant, as to the members of the Board, *after* trial.

In any event, it would be improvident, because premature, for this Court to undertake, at this time, by the grant of certiorari, to construe the meaning of California Statutory provisions (Petition, p. 7) (set forth in Appendix C to Petition, p. 5), or of sections of the Los Angeles City Charter (Petition, p. 8) (appearing in Appendix D, p. 8), since neither the District Court nor the Court of Appeals did so; it will be time enough for this Court to concern itself with them after trial, and then only if (a) there is a judgment against the members of the Board, (b) a construction of these provisions is necessary, and (c) necessary because of some federal question.

At the moment, in the present early stages of the proceedings in the District Court, the statement by the President of the Board as to the Board's plenary authority in disciplinary proceedings over police officers (see Appendix B, *infra*) may be adequate to the occasion. He said:

> ". . . While the disciplinary procedures of the Police Department are contained in Section 202 of the Charter of the City of Los Angeles, it is the responsibility of the Board of Police Commission-

ers to determine that complaints against Police Department personnel are adequately investigated and properly adjudicated. . . ."

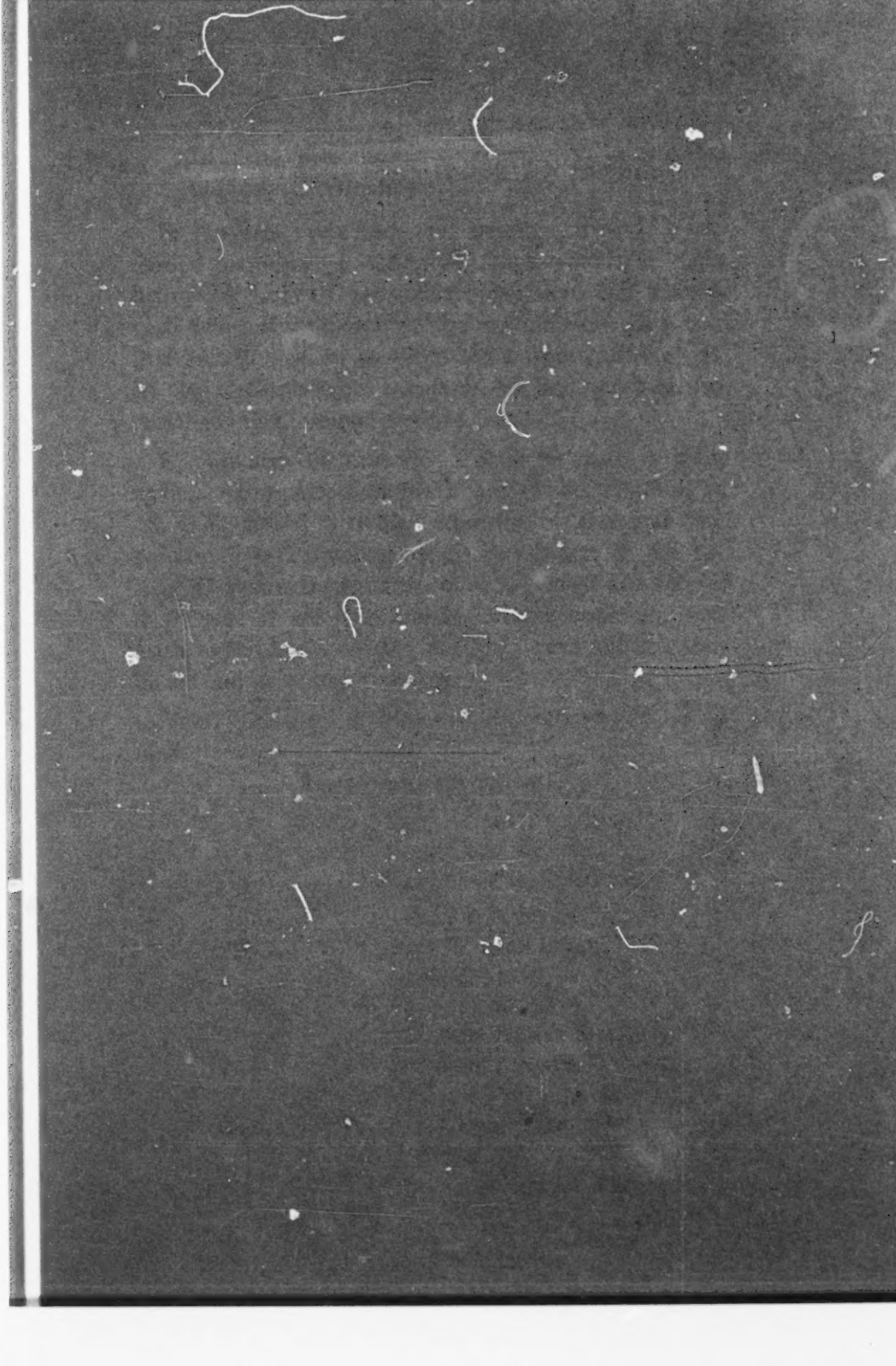
5. In any event, whether hearings should be accorded members of minority groups, who seek relief before the Board from police oppression, and whether such hearings should be public, are matters that should first be adjudicated, by the District Court, after a trial on the merits, subject to appeal to the Court of Appeals, and then brought to this Court.

6. Finally, the Amended Complaint states a claim against the members of the Board for it alleges [Par. 48, C.T. 82-83] that they, knowing of the acts and pattern of conduct engaged in by officers of the Los Angeles Police Department, have neglected and refused to prevent or aid in preventing said wrongs, and continue to fail to do so; and that they have allowed, condoned and permitted said acts.

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

A. L. WIRIN,
FRED OKRAND,
LAURENCE R. SPERBER,
TERRY J. HATTER, JR.,
PAUL L. MCKASKLE,
GARY BELLOW,
STANLEY W. LEVY,
MICHAEL HENRY SHAPIRO,
DAVID A. BINDER,
GEORGE WM. PILLING,
c/o Western Center on Law and Poverty,
Attorneys for Respondents.



APPENDIX A.

Sections of the Los Angeles City Charter.

Sec. 70(b).

. . .

Said departments [Personnel, Fire and Police] shall each be under the control and management of five commissioners. . . .

Sec. 77.

Whenever in this charter the words "head of a department" are used, it shall be understood to refer to the board of the department in the case of any department placed under the control and management of a board, and the general manager of the department in the case of any department placed under the control and management of a general manager.

Sec. 78.

The head of each department shall have the power (subject to the provisions of this charter and to such ordinances of the city as are not in conflict with the grants of power made to each such department of the city government elsewhere in this charter), to supervise, control, regulate and manage the department and to make and enforce all necessary and desirable rules and regulations therefor and for the exercise of the powers conferred upon the department by this charter.

. . .

APPENDIX B.

Statement of President of Board of Police Commissioners of Los Angeles, December 24, 1963, quoted at page 10 of the *Report and Recommendations of the Special Citizens' Law Enforcement Committee*, January 6, 1964, appointed by the Chairman of the Los Angeles County Commission on Human Relations, and approved by the Los Angeles County Board of Supervisors (July 9, 1963), and by the Los Angeles City Council (July 12, 1963):

> "By virtue of the provisions of Sections 78 and 79 of the Charter of the City of Los Angeles, the Board of Police Commissioners is the head of the Los Angeles Police Department and is empowered to supervise, control, regulate and manage the Department, and to make and enforce all necessary and desirable rules and regulations in the discharge of these responsibilities. While the disciplinary procedures of the Police Department are contained in Section 202 of the Charter of the City of Los Angeles, it is the responsibility of the Board of Police Commissioners to determine that complaints against Police Department personnel are adequately investigated and properly adjudicated. . . ."